Mar 29, 2000

No. 99-699

Supreme Court, U.S.
FILED
MAR 29 2000
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

BOY SCOUTS OF AMERICA,
Petitioner,

v.

JAMES DALE,
Respondent.

ON WRIT OF CERTIORARI
TO THE NEW JERSEY SUPREME COURT

BRIEF OF AMICI CURIAE BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM (BALIF), *ET AL.* IN SUPPORT OF RESPONDENT

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CINCINNATI, OHIO 800-890-5001

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29 pp

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Pursuant to this Court's rule 37.3,[1] *amicus curiae* Bay Area Lawyers for Individual Freedom (BALIF), and various other *amici*, representing a number of bar associations nationwide, respectfully submit this brief urging this Court to affirm the judgment of the Supreme Court of New Jersey. In particular, *amici* request that the Court find that a State's application of its anti-discrimination laws to prohibit sexual orientation discrimination by an organization like the Boys Scouts of America ("BSA"), which has sought and obtained endorsement and leadership by governmental agencies and has enlisted the joint participation of the government in promulgating its viewpoints, does not infringe upon the organization's First Amendment rights of expressive association.

INTEREST OF THE *AMICI CURIAE*

BALIF is a minority bar association of over 500 lesbian, gay and bisexual members of the San Francisco Bay Area legal community. Founded in 1980, BALIF promotes the professional interests of its members and the legal interests of the gay, lesbian and bisexual community at large. As part of that mission, BALIF actively participates in public policy debates concerning the rights of lesbians, gay men and bisexuals. BALIF frequently appears as *amicus curiae* in cases where it can provide perspective and argument that will

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[1] Written consent to the filing of this brief has been obtained from the parties in accordance with Supreme Court Rule 37.3(a). Copies of the consent letters have been filed with the Clerk. Pursuant to Supreme Court Rule 37.6, the *amici* state that this brief was not authored in whole or part by counsel for any party and that no party or entity, other than the *amici* and their counsel, made any monetary contribution to its preparation or submission.

inform a court's decision on a matter of broad public importance, such as this case. BALIF is joined by — other *amici* which are also minority and local bar associations around the country.

The interests of the other *amici curiae* are detailed in the Appendix to this brief.

BALIF and the other *amici* have long been concerned about the discrimination that many of our nation's citizens face based solely on characteristics such as their sexual orientation. *Amici* believe that States may constitutionally protect their citizens against discrimination in public accommodations, as New Jersey and other States have done. *Amici* further believe that organizations like the BSA, which have voluntarily sought and obtained extensive governmental sponsorship and endorsement and have enlisted governmental participation in dissemination of the organization's message, have no First Amendment associational right to engage in discrimination in violation of State law.

SUMMARY OF ARGUMENT

This brief is submitted in response to the argument by the BSA that application of State anti-discrimination laws to prohibit exclusion of gay members based solely on their sexual orientation infringes upon its expressive association rights under the First Amendment. The BSA's claim, which relies wholly on the attempt to distinguish the *Roberts* trilogy of cases,[2] misses the mark because it entirely overlooks the

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[2] *See New York State Club Ass'n v. City of New York*, 487 U.S. 1, 108 S.Ct. 2225 (1988); *Board of Dir. of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 107 S.Ct. 1940 (1987); *Roberts v.*

extraordinary degree of financial, legislative and symbolic interconnection between the organization and both the federal and State governments. Unlike the organizations in the cases on which the BSA relies, the BSA has actively and successfully obtained the endorsement, sponsorship and imprimatur of all levels of our government, from the President and Congress of the United States to State-run public schools and local fire and police departments. The organization's profound nexus with the government, its voluntary enlistment of federal and State participation in disseminating its message of positive moral values to our nation's youth, and the resulting public perception of government endorsement of the organization's viewpoints undercut the BSA's expressive association claim for three reasons.

First, where an organization actively enlists the sponsorship, leadership and joint participation of the government to express its viewpoints, as the BSA has done for decades, and thereby chooses to benefit from its close identification with the government, it cannot invoke its expressive association rights to engage in discrimination in a manner that its government partner would itself be prohibited from engaging in. Moreover, where a State has affirmatively prohibited discrimination based on sexual orientation, the BSA's decision to enlist the agencies of that State as leaders of the organization is wholly inconsistent with any claim that the organization's core purposes require exclusion of

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United States Jaycees, 486 U.S. 609, 104 S.Ct. 3244 (1984). In these cases, this Court upheld application of State and local anti-discrimination laws to prohibit various private organizations from excluding female members.

members who do not agree with its purported anti-gay message.

Second, as an evidentiary matter, the long history of joint participation by BSA and the government in promulgating BSA's message of positive moral values to youngsters — a message that traditionally has been silent with respect to questions of sexual orientation but that has advocated "tolerance of all persons," Brief for Petitioners 5 — belies the BSA's claim that its core expressive purpose is inconsistent with gay membership. In fact, to find otherwise would suggest that the governmental agencies that have sponsored the BSA have in fact known about and endorsed the organization's purported "philosophy" against gay members — a notion that finds absolutely no support in the record and that could raise serious issues under both State and federal law. On the contrary, were the BSA genuinely concerned about advocating a position condemning homosexuality as its core expressive purpose and requiring the exclusion of gay members, it could not logically enlist as its troop leaders the agencies and officials of a State that advocates a policy prohibiting discrimination based on sexual orientation.

Finally, the "parade of horribles" that the BSA posits would result from affirmance of the decision below is wholly without basis. The unique relationship between the BSA and the government, based in large part on their joint promulgation of a message advocating positive values to young people, distinguishes the organization from other private noncommerical associations which do not solicit or receive similar endorsement, leadership and symbolic support from the government. There is therefore no danger that affirmance will lead down a "slippery slope" of excessive government intrusion into all private organizations' membership policies. On the contrary, the BSA has actively

encouraged government participation in its expressive activities, is therefore not wholly private, and cannot be heard to complain when its governmental partner seeks to enforce its own laws against discrimination.

As the New Jersey Supreme Court found, the BSA's voluntary, substantial and widely-touted connections with the government have rendered it a public accommodation within the meaning of the State's anti-discrimination statute. Likewise, the organization's active enlistment of all levels of government, including the State that enacted the anti-discrimination prohibition at issue, to assist in communicating its core message, cannot be reconciled with its claimed right to discriminate. Under these circumstances, and in light of the State's compelling interest in preventing unfair and irrational discrimination against its citizens based on sexual orientation, application of the State's anti-discrimination law to the BSA does not infringe upon its expressive association rights.

ARGUMENT

A. THE PROFOUND NEXUS BETWEEN THE BSA AND THE GOVERNMENT AND THE BSA'S CHOICE TO ENLIST THE GOVERNMENT IN ADVOCATING ITS MESSAGE ARE INCONSISTENT WITH THE BSA'S EXPRESSIVE ASSOCIATION CLAIM

The BSA argues that, under the First Amendment, private noncommercial associations retain the right to exclude any individual or group they choose from membership and especially from leadership positions, regardless of whether the exclusion is discriminatory and in violation of State law. The BSA claims that the *Roberts* trilogy of cases, prohibiting

certain private clubs from discriminating against women, are distinguishable on their face because those clubs were "quasi-commercial" and they "did not have any moral code or philosophy that was logically related to their challenged membership criteria." Brief for Petitioner 34.

But the right of wholly private organizations to refuse membership to those whose participation necessarily conflicts with the group's philosophical stance is not at issue here. The BSA's expressive association claim, and its heavy reliance on the *Roberts* trilogy, disregard the reason that the State's anti-discrimination law applies to its membership policies in the first place. Unlike the organizations at issue in those cases, the BSA has long maintained and has substantially benefited from voluntary, profound and widely-publicized connections with all levels of government, and has partnered with those governmental units in communicating its message advocating moral virtues to the nation's young. This well-established BSA/government partnership works to endow the BSA's discriminatory membership practices with the "clear and unmistakable imprimatur of the State." *Shelley v. Kraemer*, 334 U.S. 1, 20, 68 S.Ct. 836, 845 (1948). In fact, unlike the private associations to which the BSA tries to compare itself, the core expressive purpose of the organization — to teach young boys wholesome character virtues — has been intentionally represented by the BSA, and is reasonably perceived by the public, as a message shared, encouraged and advocated by the government.

Under such circumstances, an organization which holds itself out as a joint participant with the government, especially for purposes of conveying its message to the public, may be limited in its otherwise constitutionally-protected conduct. *See, e.g., San Francisco Arts & Athletics v. United States Olympic Committee*, 483 U.S. 522, 548, 107 S.Ct.

2971, 2987 (1987) ("*SFAA*") (O'Connor, J., concurring and dissenting in part) (applying equal protection scrutiny to United States Olympic Committee's refusal to grant permission to use the word "Olympics" to gay athletic group where the Committee and the government are "joint participants in the challenged activity"). In fact, focus of the four *SFAA* dissenters detailing the close relationship between the federal government and the Olympic Committee, a non-governmental organization, is instructive here. As described below, both the BSA and the Olympic Committee have substantially entwined themselves with the government to the extent that they both have a governmental relationship that "confers a variety of mutual benefits." *Id.*, U.S. at 556-57, S.Ct. at 2991-92 (Brennan, J., dissenting); *see also id.*, U.S. at 548, S.Ct. at 2987 (O'Connor, J., dissenting in part "largely for the reasons explained by Justice Brennan in Part I-B of his dissenting opinion"). Moreover, "in the eye of the public, both national and international, the connection between the [government and the organization] is profound." *Id.*, U.S. at 557, S.Ct. at 2992 (Brennan, J., dissenting). Finally, there is a "close financial and legislative link" between the "challenged conduct," here the BSA's claims with respect to its articulated "code" or "philosophy," and the government. *Id.*, U.S. at 558, S.Ct. at 2992.

1. The Relationship between the BSA and the Government Provides a Wide Range of Mutual Benefits.

As the four dissenters in *San Francisco Arts & Athletics* recognized, where an organization and the government enter into a "symbiotic relationship" to their mutual benefit, there may arise a "sufficiently close nexus" that "action of the [private] entity . . . may fairly be treated as that of the State itself." *Id.* (quotations omitted); *see also*

Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S.Ct. 856 (1961) (applying equal protection analysis to prohibit discrimination by private restaurant where its relationship with public parking facility contained in the same building "confer[red] on each an incidental variety of mutual benefits"). As the record in this case establishes, that is precisely the nature of the relationship between the BSA and the government.

The BSA is a federally chartered organization. At the federal level, Congress has conferred a broad range of legal, financial and symbolic benefits on the BSA. These include the exclusive right to use emblems, badges, and descriptive marks and words, *see* 36 U.S.C. § 30905, the right to use without charge United States government equipment, property and services, *see* 10 U.S.C. § 2544, and the free use of designated lands within the National Forest System, *see* 16 U.S.C. § 539f. Moreover, as the BSA widely publicizes in order to communicate to the public that its core philosophy and message are shared by the government, "[o]ne of the causes contributing to the success of the [BSA] has been the thoughtful, wholehearted way in which each President of the United States since William Howard Taft in 1910 has taken an active part in the work of the movement." JA 46. As the record demonstrates, each such President has lent to BSA the extraordinary prestige and esteem of the office of the Chief Executive by serving as the organization's "Honorary President" during his term in office. JA 46.

This profound government nexus is equally broad at the state and local levels. New Jersey, like most States, confers substantial tax and in-kind benefits on the BSA. *See Dale v. Boy Scouts of America,* 734 A.2d 1196, 1212 (citing N.J.S.A. 23:2-3 and N.J.S.A. 39:3-27). Most significant is the role that State-run public schools and such local agencies

as fire and police departments play as so-called "charter organizations" or sponsors of BSA activities. JA 57. These local government agencies and their officials are "responsible for leadership, the meeting place, and support for troop activities," JA 57-58, an undertaking that involves both the use of public funds and resources and the invocation of the moral stature of the government to promote the philosophy and moral code of the BSA.

Moreover, the government has long acknowledged the advantages it enjoys from its endorsement of, and links to, the BSA and from its participation in promoting the message of encouraging positive values among young people. As Congress observed in 1916, the Boy Scout movement "tends to conserve the moral, intellectual, and physical life of the coming generation, and in its immediate results does much to reduce the problem of juvenile delinquency in the cities." JA 319. Congress has further noted that "Boy Scouts have demonstrated the value of the education and training they received as an auxiliary force in the maintenance of public order and the administration of first-aid and practical assistance in times of great public emergencies." JA 319. In response to a 1934 appeal from President Franklin D. Roosevelt to help "the needy," Scouts contributed "by collecting nearly 2 million articles of clothing, household furnishings, and other articles for family needs." JA 49-50. President John F. Kennedy observed that, "the principles learned and practiced as Boy Scouts add to the strength of America and her ideals." JA 52. With respect to the "government agencies" that sponsor Boy Scout Troops, the BSA asserts that "[s]couting helps them achieve their objectives." JA 79. President Richard M. Nixon commended the BSA for teaching "good citizenship" and developing the potential of young citizens "for public service and [to] become effective leaders in their communities and in our nation." JA

48. President Gerald Ford expressed his "confiden[ce] that [the BSA's] ability to bring ideals, values, and leadership training to millions of our young people will help to bring about a new era—a time in which not only our Republic will progress in peace and freedom, but a time in which the entire world shall be secure, and all its people free." JA 48. President Ronald Reagan observed that "the Scouts strengthen the cornerstone of individual freedom in our nation." JA 46.

2. The Relationship between the BSA and the Government Has Created A Profound Connection Between the Two in the Public Eye.

The portion of Justice Brennan's opinion in *SFAA* in which Justice O'Connor concurred also relied on the observation that "in the eye of the public . . . the connection between the decisions of the United States Government and those of the United States Olympic Committee is profound." *SFAA*, 483 U.S. at 557 &. n.14, 107 S.Ct. at 2992 & n.14 ("In *Burton* the Court also found significant evidence that would link the two actors in the public's eye.") (Brennan, J, dissenting). This conclusion was based in part on the fact that "[t]he President of the United States has served as the Honorary President of the USOC," and "[t]he national flag flies both literally and figuratively over the central product of the USOC, the United States Olympic Team." *Id.; see also Burton*, 365 U.S. at 720; 81 S.Ct. at 859 (finding close link in public eye based in part on the fact that "the Authority located at appropriate places [on the facility] official signs indicating the public character of the building, and flew from mastheads on the roof both the state and national flags").

For the better part of the past century, the BSA has cultivated, with recognized success, an equally strong

association in the public's mind between the government and its own activities and message of encouraging the physical, moral and mental development of young boys. By accepting not only the resources of the government but also its leadership — symbolic at the presidential level and actual at the local "charter organization" level — the BSA has joined with the government in promoting that perception. Like the Olympic Committee, the BSA has enlisted the United States President as its Honorary President, and the flag of the United States adorns every scout uniform and flies over scout activities. Confronted with scout meetings sponsored by local schools, led by local police and fire departments and supervised by local officials, held on government property with government monies and materials, and symbolically presided over and encouraged by the United States President, no member of the public could conclude other than that the BSA's message enjoys the full support of the government.

3. The BSA and the Government Have Close Financial and Legislative Links.

Also, as the four dissenters noted in *SFAA* with regard to the USOC, the BSA's promotion of its message maintains close financial and legislative links to the government. Like the USOC, the BSA enjoys special federal legislative protection of its name and associated symbols such as badges and insignia, beyond the scope of ordinary patent law. *Compare* 36 U.S.C. §30905 ("The [BSA] corporation has the exclusive right to use emblems, badges, descriptive or designating marks, and words or phrases the corporation adopts.") *with* 36 U.S.C. § 380 (restricting use of the words and symbols associated with the Olympics). Congress has justified these special legislative benefits as a protection against "those who are seeking to profit" from the popularity of the BSA. *See* JA 321. Moreover, each governmental

entity that undertakes to sponsor a Boy Scout troop is required by BSA Bylaws to provide "adequate facilities, supervision and leadership." JA 375. The support provided by governmental "charter organizations" is intended to and does have the effect of deeply involving governmental officials in affirmatively teaching the BSA's moral code and philosophy.

4. States Have A Compelling Interest In Preventing Joint Governmental Partners From Engaging In Invidious Discrimination And Conscripting State And Local Entities Into Disseminating A Discriminatory Message Antithetical To State Policy And Practice.

In light of this joint partnership between the government and the BSA in promulgating the organization's philosophy and code, and the resulting governmental imprimatur stamped on the organization and its message, the BSA cannot invoke its First Amendment rights to avoid anti-discrimination provisions in a way that would run afoul of the Equal Protection provisions of the Fifth and Fourteenth Amendments. Like the discriminatory law struck down by this Court in *Romer v. Evans*, 517 U.S. 620, 116 S.Ct. 1620 (1996), the BSA's claimed membership policy pursuant to which Respondent was excluded — a rule which "specifically forbid[s] membership to homosexuals," JA 137 — "is a status-based [provision] divorced from any factual context from which [one] could discern a relationship to legitimate state interests." *Romer*, 517 U.S. at 635, 116 S.Ct. at 1629. As this Court held in *Romer*, a status-based restriction on gay participation in an organization as profoundly connected to the government as is the BSA cannot rest on the rationale of "respect for other citizens' freedom of association, . . . in particular the liberties of [others] who have personal or

religious objections to homosexuality." *Id.* Yet, despite having enlisted governmental participation in its expressive activities, the BSA attempts to rationalize its discriminatory membership practices by relying precisely on the impermissible purposes — associational freedom to exclude gay members and a moral or philosophical objection to homosexuality — explicitly condemned in *Romer*. Like the statute invalidated there, the BSA's purported membership policy "identifies persons by a single trait and then denies them [access] across the board." *Id.*, 517 U.S. at 633, 116 S.Ct. at 1628. Accordingly, the BSA's discriminatory membership policy bears no rational relation to any legitimate end and given the BSA's ties to the government can support no legitimate expressive purpose protected by the First Amendment.

Moreover, the BSA's enlistment of the State of New Jersey as a sponsor and leader of its activities, despite that State's (and other sponsoring States') antidiscrimination policy, is entirely inconsistent with any expressive association claim based on exclusion from leadership positions of those that do not share the organization's purported stance on homosexuality. It makes no sense to seek and accept supervision, leadership and support from a State that affirmatively condemns sexual orientation discrimination, on the one hand, while simultaneously challenging the prohibition on the ground that it interferes with the organization's associational right to select leaders that share its views favoring the discrimination. While the churches, synagogues, and charitable youth organizations cited by the BSA, *see* Brief for Petitioner 32 & n.8, may be afforded the discretion to discriminate in selecting their leadership, none of those wholly private associations voluntarily invites leadership, sponsorship and supervision by State agencies

which both administer and are subject to anti-discrimination laws — as the BSA has done here.

In short, as in *SFAA*, "[i]t would certainly be irony amounting to injustice," 483 U.S. at 558, 107 S.Ct. at 2992 (quotation omitted), to permit a group like the BSA, incorporated "for the purpose of establishing through the boys of today the very highest type of American citizenship," JA 319, which enlists governmental entities into leadership positions, to teach prejudice and discrimination by example.

B. THE BSA'S PARTNERSHIP WITH THE GOVERNMENT IN ADVOCATING ITS PHILOSOPHY BELIES ITS CLAIM THAT DISCRIMINATING AGAINST GAY PERSONS IS A CENTRAL TENET OF ITS PHILOSOPHY

As an evidentiary matter, the BSA's claim that its core message, moral code or philosophy cannot be reconciled with gay membership is undercut by its extraordinarily close relationship with the government and the gay-neutral message advocating positive moral values that it has espoused for decades in order to cement that government sponsorship. As the Supreme Court of New Jersey found, the record does not support the BSA's claim that a "shared goal[] of Boy Scout members is to associate in order to preserve the view that homosexuality is immoral." *Dale*, 734 A.2d at 1224 (quotation omitted). This conclusion is bolstered by evidence of the organization's extensive relationship with the government. None of the Congressional or State legislation, presidential endorsements or state and local sponsorship directed at supporting the BSA even remotely refer to any anti-gay purpose or message. In light of the organization and government's long and shared history of promulgating a

message of wholesome ethics and values for young people, a message that always has been silent on sexual orientation, the BSA's present claim now that its message inherently conflicts with gay membership is wholly pretextual.

In fact, it is doubtful that the association could ever have solicited or obtained the governmental sponsorship it enjoys had it openly advanced its purported discriminatory message. Open exclusion of gay members would raise serious questions about the ability of the States with anti-discrimination laws like New Jersey's to continue to sponsor, lead and otherwise participate in BSA activities. In any event, the BSA cannot be heard to claim that it condemns homosexuality and excludes gay members as part of its core expressive purpose when, at the same time, it actively enlists as its leaders the agencies and officials of States that have espoused the contrary policy and have banned discrimination based on sexual orientation. As result, the New Jersey Supreme Court's finding that the respondent's "membership" does not violate the BSA's right of expressive association because his inclusion would not "affect in any significant way the BSA's existing members' ability to carry out their various purposes," *Dale*, 734 A.2d at 1225 (quotation omitted), should be upheld.

C. THE BSA HAS OVERLOOKED ITS CLOSE NEXUS WITH THE GOVERNMENT IN EXAGGERATING THE CONSEQUENCES OF THE DECISION OF THE COURT BELOW

Finally, the BSA's dire warnings that affirmance of the New Jersey Supreme Court's opinion will trample on the associational rights of wholly private associations and will fundamentally change the face of America are without merit.

Contrary to the BSA's admonition that "any organization could find itself the target of a state's desire to enforce conformity to its ideas of desirable social change," Brief for Petitioners 37, the New Jersey decision does not reach nearly so far. The BSA's long-standing and entrenched links with the government make clear that the organization is not wholly private. The decision below simply permits States to serve their compelling interest in prohibiting irrational discrimination against their citizens by organizations which have voluntarily chosen to enmesh themselves — their finances, sponsorship, supervision, leadership, and most critically, their expressive purpose — with the government and have actively sought the imprimatur of the government for their articulated message. Such a result is hardly the "extraordinary limitation on freedom of association as it is commonly understood," that the BSA conjures. *See* Brief for Petitioners 37.

On the contrary, the Constitution is far more offended by the government's joint partnering with a private association in expressive conduct that advocates discrimination against, and exclusion of, a class of citizens, in contravention of the laws of many States. The expressive association rights of an organization to discriminate are reasonably limited where the organization has voluntarily joined forces to promote its message with a government that condemns — and is constitutionally prohibited from endorsing — the discrimination, and where the discrimination, like the policy the BSA attempts to defend here, is related to no rational state interest.

CONCLUSION

For the reasons stated herein, *amici* respectfully request that this Court affirm the decision of the New Jersey

Supreme Court and hold that the expressive association rights of the BSA are not infringed by application of the State's anti-discrimination laws to prevent the BSA from excluding members based solely on their sexual orientation.

Respectfully submitted,

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[3] Counsel wish to acknowledge the assistance of Eric O. Bravin, an associate with Munger, Tolles & Olson, in the preparation of this brief.

APPENDIX

DESCRIPTIONS OF *AMICI CURIAE*

The Bar Association for Human Rights of Greater Houston, Inc. (BAHR) is a local bar association and is a Texas non-profit corporation serving lesbian, gay, bisexual, and transgendered lawyers, law students and legal professionals in the greater Houston, Texas area. BAHR sponsors educational seminars and assists lawyers in communicating with one another to better serve the citizens of Houston.

The Bar Association of San Francisco (BASF) is the second-largest voluntary bar association in California, numbering over 9,500 members. BASF has a long and distinguished tradition of commitment to equality of opportunity, irrespective of income, for racial and ethnic minorities, women, gay men and lesbians, people with disabilities and others who have historically been the victims of discrimination. As an integral component of that commitment, the Association has historically stood in strong opposition to discrimination on the basis of sexual orientation.

The Center for Lesbian and Gay Civil Rights is a not-for-profit legal services organization providing legal assistance, representation and education for lesbians and gay men in Pennsylvania. The Center represents individuals in cases of public accommodation discrimination throughout Pennsylvania. It is common for Courts of the Commonwealth of Pennsylvania to look to the jurisprudence of New Jersey because of the proximity of the two states. Thus, the result in this case will be used as influential authority in similar cases litigated in Pennsylvania on behalf of clients of the Center for Lesbian and Gay Civil Rights. In addition, the Center for

Lesbian and Gay Civil Rights is currently the largest lesbian and gay Civil rights organization in the Commonwealth of Pennsylvania. The Center responds to approximately 750 calls for legal assistance each year. The result in this case will inform the discussion of public and judicial policy in the Commonwealth in a variety of different areas of the law. The Center will be the primary vehicle for the development of this discussion. Accordingly, the Center seeks to join in this brief as amicus.

The Colorado Lesbian and Gay Bar Association is a voluntary professional association of attorneys and legal professionals which, among other activities, seeks to educate its members and the bar at large in the state of Colorado about legal issues confronting the gay, lesbian, bisexual and transgendered community. Chief among the legal issues confronting this community is the civil right of access to housing, employment and public accommodations by gay, lesbian, bisexual and transgendered persons. The determination in the case at bar that the appellant Boy Scouts of America is a place of public accommodation is of significant interest to our members, many of whom are themselves are gay, lesbian, bisexual or transgendered, and all of whom represent clients who are members of that community. Any interpretation of the status of "public accommodation" will impact our members, since virtually all of the state and local civil rights laws and ordinances in Colorado include provisions prohibiting discrimination in public accommodations. While only a few of those laws and ordinances include sexual orientation as a class attribute upon which such discrimination is banned, the impact of decisions concerning the reach of civil rights laws upon places of public accommodation will determine the extent to which our members and their clients can participate fully in American civil society.

Gay and Lesbian Lawyers of Philadelphia (GALLOP) is a bar association of over three hundred sixty (360) legal professionals and serves Eastern Pennsylvania, Delaware and Southern New Jersey. GALLOP is commited to the civil and human rights of gay men and lesbians, and is especially concerned with the enforcement of New Jersey's Law Against Discrimination (LAD). GALLOP has lawyer-members in New Jersey, and each year receives many requests from New Jersey citizens for legal referrals to assist with claims under the LAD.

GAYLAW, founded in 1990, is an independent, non-partisan bar association serving lesbian, gay, bisexual, and transgendered lawyers, law students and legal professionals in the national capital area. GAYLAW, with a membership of over 300, works to advance the rights of lesbian and gay men, to be their voice within the legal community, and to improve their professional lives. A member of the National Lesbian and Gay Law Association, GAYLAW acts in coalition with other local and national groups dedicated to lesbian and gay concerns. GAYLAW appears as amicus curiae in cases where it can join other amici in providing perspective and argument from the viewpoint of its membership.

The Lesbian and Gay Law Association of Greater New York, Inc. (LeGaL) is a 20 year-old professional association of the lesbian and gay legal community in the New York metropolitan area with almost 500 members. A essential part of LeGaL's mission is to promote the civil rights of all people including lesbians, gays, bisexuals, and persons of transgender experience (LGBT). LeGaL is interested in the outcome of this case because the issues decided here will have a profound effect on the LGBT communities both in New York City and throughout the United States.

LHR: The Lesbian and Gay Bar Association (LHR) is a not-for-profit association of lesbian, gay, bisexual and transgendered attorneys, judges, legal workers and law students in the Los Angeles, California area. Our mission is to provide a strong leadership presence within the legal profession and in the community at large through legal advocacy, educational activities, social functions and participation in civic activities in which we promote equality and fairness for all people. As a part of such efforts, we maintain an affiliate status with both the Los Angeles County Bar Association and the National Lesbian and Gay Law Association, as well as maintain cooperative relationships with other local and national associations or organizations around the country, to promote and protect the interests of lesbian, gay, bisexual and transgendered persons throughout the nation. LHR also takes particular interest in this case because of its potential impact upon similar cases which have either previously come before the California Supreme Court or are likely to in the future. Indeed, the very issue addressed by the New Jersey Supreme Court in this case was also taken up by our high court in *Curran v. Mount Diablo Counsel of the Boy Scouts of America*, 17 Cal.4th 670 (1998). Cases such as these raise important constitutional questions of equal protection and religious freedom as well as the authority of government to put an end to discrimination that is public or private.

The Massachusetts Lesbian and Gay Bar Association (MLGBA) is a voluntary statewide professional association of lawyers maintaining a visible lesbian and gay presence within the Massachussetts legal community. MLGBA is affiliated with the Massachusetts Bar Association (MBA) and the National Lesbian and Gay Law Association (NLGLA). MLGBA promotes the administration of justice throughout Massachusetts for all person without regard to their sexual

orientation, advocates for the enactment and enforcement of laws promoting equal rights and treatment for lesbians and gay men, and is thus interested in the outcome of this case, especially as it may affect the administration of Massachusetts' anti-discrimination statute, which prohibits discrimination on the basis of sexual orientation.

The Minnesota Lavender Bar Association (MLBA) is a recently-established organization whose membership includes gay, lesbian, bisexual, and transgendered (GLBT) attorneys, academics, students, and others involved in the legal profession. Based largely in the Twin Cities area, MLBA seeks to educate the legal profession regarding GLBT legal issues, assure that the legal system responds appropriately to GLBT individuals and concerns, and encourage awareness by GLBT individuals of their legal rights. Like New Jersey, Minnesota protects its citizens from discrimination based on sexual orientation. Consequently, MLBA's members and constituents are especially concerned when public organizations invoke private associational rights in an attempt to avoid the reach of State anti-discrimination laws.

The National Lesbian and Gay Law Association (NLGLA) was founded in 1988 as a voice for the nation's lesbian and gay attorneys. In 1992, the NLGLA was officially affiliated with the American Bar Association and has since that time participated actively in the ABA's House of Delegates on behalf of the lesbian, gay, bisexual, and transgendered legal community. The NLGLA also sponsors an annual conference at which hundreds of attorneys, judges, legislators, students and others gather from across the nation and around the world to address issues of current interest to the organization's members and to the clients we serve. The NLGLA and its members (many of whom live and practice in

states and municipalities which have anti-discrimination statutes and ordinances) have a vital interest in the issues raised in this case.

Washington LEGALS is a professional organization of lawyers, legal workers, judges, paralegals, legal secretaries, investigators, law students, law professors, and other legal professionals dedicated to advancing the rights of the lesbian and gay community. LEGALS is an affiliate of the National Lesbian and Gay Law Association (NLGLA). LEGALS is recognized by the King County Bar Association, Washington State Trial Lawyers Association and the Washington State Bar Association as a minority bar association.